BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SU WARREN, Claimant, v. WILLIAMS & PARSONS, P.C., CPAS, Employer, and STATE INSURANCE FUND, Defendants.	**IC 2007-003559** **ORDER DENYING RECONSIDERATION** **Filed May 30, 2013**

Pursuant to Idaho Code § 72-718, Claimant moved for reconsideration of the Commission's decision in the above-captioned case on April 10, 2013. Claimant argues that she was prematurely forced to hearing before reaching maximum medical improvement (MMI) when the Commission denied her multiple requests to vacate and re-set the hearing. Claimant also argues that Defendants needed time to review records from Dr. Michelle White and Internal Medicine Associates, which the Commission erroneously denied admitting into evidence. Claimant asks that the Commission vacate its decision, allow Claimant medical care until she reaches MMI, and then reschedule a hearing.

On April 22, 2013, Defendants (Employer/Surety) filed a brief in opposition to Claimant's request for reconsideration. Defendants argue that Claimant has not presented any new authority, factually or legally, to support her request for reconsideration. Defendants argue that the Commission's findings are supported by the record.

DISCUSSION

Under Idaho Code § 72-718, a decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated; provided, within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision. J.R.P. 3(f) states that a motion to reconsider "shall be supported by a brief filed with the motion." Generally, greater leniency is afforded to *pro se* claimants. However, "it is axiomatic that a claimant must present to the Commission new reasons factually and legally to support a hearing on her Motion for Rehearing/Reconsideration rather than rehashing evidence previously presented." Curtis v. M.H. King Co., 142 Idaho 383, 388, 128 P.3d 920 (2005). On reconsideration, the Commission will examine the evidence in the case, and determine whether the evidence presented supports the legal conclusions. The Commission is not compelled to make findings on the facts of the case during a reconsideration. Davison v. H.H. Keim Co., Ltd., 110 Idaho 758, 718 P.2d 1196. The Commission may reverse its decision upon a motion for reconsideration, or rehearing of the decision in question, based on the arguments presented, or upon its own motion, provided that it acts within the time frame established in Idaho Code § 72-718. *See* Dennis v. School District No. 91, 135 Idaho 94, 15 P.3d 329 (2000) (citing Kindred v. Amalgamated Sugar Co., 114 Idaho 284, 756 P.2d 410 (1988)).

A motion for reconsideration must be properly supported by a recitation of the factual findings and/or legal conclusions with which the moving party takes issue. However, the Commission is not inclined to re-weigh evidence and arguments during reconsideration simply because the case was not resolved in a party's favor.

In this case, the Commission made the following findings: (1) Claimant injured her neck as a result of the work accident; (2) Claimant is entitled to TTD/TPD during the period of

recovery; (3) Claimant is entitled to medical care received, related to the accident, through December 23, 2008; (4) Claimant has not shown her entitlement to medical care in the form of a pain management program; (5) Claimant is entitled to PPI rated at 5% of the whole person; (6) Claimant failed to show it likely she is entitled to permanent disability in excess of PPI; (7) Claimant failed to show entitlement to retraining benefits; and (8) Claimant failed to show a basis for an award of attorney fees under Idaho Code § 72-804.

Claimant's Multiple Requests to Vacate and Reset the Hearing

Claimant does not allege fraud. However, Claimant argues that she was prematurely forced to hearing, without the opportunity to obtain medical care or reach medical stability. Defendants argue that Claimant's strategy has been to delay the resolution of the case. Claimant was aware she had the burden of producing evidence to support her claim for medical care and stability, and had multiple opportunities to do so. Claimant's failure to persuasively support her case is an improper reason to vacate the Commission's decision and order.

The record reflects that the Commission has vacated and reset the hearing on multiple occasions. Claimant filed her complaint on August 9, 2010. Several months later, on February 16, 2011, Defendants requested a hearing. Claimant did not file any objection to Defendants' request, and the Referee scheduled the hearing for August 16, 2011. On May 20, 2011, Claimant had a psychological evaluation, which prompted Defendants to request that the August 2011 hearing be vacated and reset. Again, Claimant did not file an objection or response. The Referee vacated the August 2011 hearing, and advised the parties to submit available dates before the Referee would reset the hearing.

On August 11, 2011, Defendants made a second request for hearing. On August 15, 2011, Claimant responded, indicating that the hearing was premature, because she needed a

surgical consultation and medical care from a neuropsychologist. However, Claimant also believed the case would be ready for hearing "in February 2012 and thereafter." On August 18, 2011, Defendants argued that the matter was ready to be set for hearing, because Defendants' were denying that further benefits were due, Claimant was employed full-time, and the only pending matter was exchanging Dr. Beaver's supplemental report. On September 30, 2011, the Referee issued a notice of hearing for March 27, 2012—one month after Claimant anticipated being prepared for hearing, and providing Claimant ample time to assemble medical evidence.

On March 19, 2012, eight days before the scheduled hearing, Claimant filed a motion to vacate the hearing, again because Claimant claimed she had not received her neuropsychological report, and that she needed an updated plan of medical care. On March 20, 2012, Defendants objected to Claimant's request to vacate, because Dr. Beaver's neuropsychological report had already been completed and provided to Claimant. Second, Defendants had denied Claimant's request for additional medical care based on their medical evidence; therefore a hearing was appropriate to test the propriety of that denial. Third, Claimant declined Surety's offer of a chronic pain management program on September 21, 2011, and such care was no longer deemed efficacious. After a telephone conference with the parties, the Referee vacated and reset the hearing to May 20, 2012.

Thereafter, the parties resumed the exchange of discovery, pre-hearing motions, and notices of proposed exhibits. On May 4, 2012, Claimant again filed a request to vacate and reset the hearing. Claimant argues that she was referred for additional care, which Defendants denied, and that she needed a finalized report of her neuropsychological evaluation. That same day, the Commission denied Claimant's request to vacate and reset the hearing.

At the hearing, Claimant renewed her request to vacate and reset the hearing. The Referee continued with the hearing, noting Claimant's objection on the record. On October 5, 2012, Claimant requested that the proceedings be stayed for three months, and then the Commission could conduct a telephone status conference. Claimant argued that Defendants' earlier offer of a pain management program would affect her impairment and disability. As discussed above, Defendants offered Claimant a pain management program, which Claimant declined in 2011. Defendants objected to Claimant's request, as Claimant declined the pain management program in 2011, and the medical evidence showed that Claimant was at MMI. The Referee denied Claimant's motion, but allowed a two-week extension on the briefing. The Commission's decision and order was filed on March 27, 2013.

Claimant urges the Commission to vacate the decision and establish a new hearing, because she believes she requires additional medical care. Claimant does not allege fraud, nor has she produced evidence of such. Claimant's multiple requests to vacate and reset the hearing are perplexing. This was a denied claim, following a similar pattern to many litigated cases before the Commission. After providing initial medical care to Claimant, Defendants received medical evidence, timely exchanged with Claimant, which they believed showed Claimant did not require further care, and was stable from her industrial accident. Claimant was apprised of Defendants' denial well before the hearing. Claimant contested Defendants' denial, and requested additional medical care.

There is no question that Claimant had the burden of establishing causation, and her need for medical care, impairment, and disability. The parties were unable to resolve the matter through mediation or a lump sum settlement. A hearing before the Commission was the correct avenue to adjudicate Claimant's request for medical care and whether or not she has reached a

point of medical stability. While Claimant had the burden of establishing her need for the requested medical care, impairment, and disability, she appears to have either expected Defendants' to develop the expert medical testimony necessary for her to prevail, or have the Commission indefinitely postpone the ultimate resolution of the case. This, the Commission could not do. Claimant has not shown that the Commission's decision and order should be vacated.

Claimant's Proposed Exhibits

The Commission declined to admit Claimant's proposed Exhibits 2, pp. 47-57, 12, pp. 48-69, and 19, because Claimant untimely exchanged the documents with Defendants, in violation of Judicial Rules of Practice and Procedure (J.R.P.) Rule 10. Defendants maintain their objection to the proposed Exhibits. Although Claimant asserts that Defendants should have "time to review and consider" those proposed exhibits, she does not provide any explanation why she failed to timely produce those, except that she attempted to vacate the hearing to allow additional time to produce the exhibits.

All of Claimant's additional evidence was discoverable prior to the time of the hearing. The proposed Exhibit 2, pp. 47-57, contained medical records from 2011, which were not exchanged with Defendants until two days before the May 10, 2012 hearing. Similarly, the proposed Exhibit 12, pp. 48 to 69, was untimely exchanged, and never disclosed in connection with Defendants' discovery request. Because proposed Exhibit 12 contained treatment from 2009 to 2011, it certainly could have been developed and produced in a timely manner. Claimant's proposed Exhibit 19 was not exchanged with Defendants until the day of hearing, leaving Defendants no opportunity to review the same. While it may be regrettable that

Claimant did not timely exchange that evidence with Defendants, the Commission will not grant a rehearing for the purpose of supplementing the record with evidence available prior to hearing.

Allowing evidence such as that contemplated by Claimant would lead to prolongation of the proceeding for rebuttal and possible surrebuttal of the parties after a final decision has been issued. Not only could the additional evidence have been discovered prior to the hearing, JRP Rule 10, requires that Claimant serve these proposed exhibits on Defendants within the time required prior to hearing, to prevent undue surprise. Claimant failed to exchange her proposed exhibits in a timely manner, and has not persuaded the Commission to revise the ruling on proposed Exhibits 2, 12, and 19.

ORDER

Based on the foregoing reasons, the Commission **ORDERS** the following:

1. Claimant's request for reconsideration is **DENIED**. **IT IS SO ORDERED.**

DATED this 30th day of __May_____, 2013.

INDUSTRIAL COMMISSION

_/s/_____
Thomas P. Baskin, Chairman

_____
R.D. Maynard, Commissioner

_/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of __May_____, 2013, a true and correct copy of the foregoing **ORDER DENYING ON RECONSIDERATION** was served by regular United States Mail upon each of the following:

NED CANNON
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H. JAMES MAGNUSON
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_/s/_____